

HOUSE No. 2083

By Mrs. Paulsen of Belmont, petition of Anne M. Paulsen and others for legislation to increase consumer choice for motor vehicle insurance. Financial Services.

The Commonwealth of Massachusetts

PETITION OF:

Anne M. Paulsen	Michael Ross
John Hayes	Stephen Murphy
Ellen Story	Maureen Feeney
J. James Marzilli, Jr.	William Walczak
Kay Khan	Dermot Shea
Douglas W. Petersen	Michael E. Festa
Deborah D. Blumer	Alice K. Wolf
Denis E. Guyer	Barry Mullen
Patricia D. Jehlen	Michael Dukakis
Benjamin Swan	John W. Scibak
Byron Rushing	Matthew C. Patrick
Peter J. Larkin	Shirley Owens-Hicks
Jay R. Kaufman	Stephen Kulik
Chuck Turner	Mary E. Grant
Felix Arroyo	Barbara A. L'Italien

In the Year Two Thousand and Five.

AN ACT TO ESTABLISH CONSUMER CHOICE IN AUTOMOBILE INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. The purpose of this act is to restructure the
- 2 Massachusetts automobile insurance system by the addition of an
- 3 option of a full no-fault bodily injury insurance policy to our cur-
- 4 rent limited no-fault policy (hereinafter referred to as "hybrid per-
- 5 sonal injury protection").

6 This bill is filed in conjunction with three other bills, the inten-
7 tions of which are to establish a special research commission to
8 evaluate competition in the automobile insurance market; to limit
9 liability settlements for uninsured motorists (commonly known as
10 “no-pay, no-play”); and, to increase the funding and staffing of the
11 Division of Insurance.

12 Many other concerns, such as the handling of group coverages,
13 increased penalties for insurance fraud, regulation of medical
14 providers, and formation of an insurance consumers’ association,
15 are likely to be the subjects of other bills to be submitted to the
16 Joint Insurance Committee and to the Legislature. The absence of
17 any mention of those other concerns in these four bills is in no
18 way intended to minimize the significance of these other concerns
19 or to indicate either approval or disapproval of the changes pro-
20 posed in those other bills. Rather, it is the stated intent of this bill
21 to focus attention solely on the specific areas of choice/no-fault
22 and its greater affordability for all insureds and especially for
23 urban motorists, with the objective that these specific features be
24 incorporated into the final composite proposed legislation of the
25 Joint Insurance Committee, along with any others of the above-
26 mentioned concerns, for presentation to the Legislature for their
27 consideration and approval.

1 SECTION 2. In order to apply the definitions of Chapter 34A
2 of the General Laws to the new sections added herein, Section
3 34A of Chapter 90 of the General Laws, as appearing in the 2002
4 Official Edition, is hereby amended by striking out, in line 2, the
5 words “thirty-four N” and inserting in place thereof the words:
6 “thirty-four W”.

1 SECTION 3. In order to add new definitions to Chapter 90 of
2 the General Laws, Section 34A of Chapter 90, as above, is hereby
3 further amended by inserting the following:

4 After line 2, add the following:

5 “Accidental bodily injury”: bodily injury, sickness, disease, or
6 death resulting therefrom, arising out of the ownership, operation,
7 or use of a motor vehicle, or while occupying such vehicle, which
8 is accidental as to the person injured.

9 After line 27, add the following:

10 “Economic loss”: objectively verifiable pecuniary loss caused
11 by an accident for reasonable and necessary medical and rehabili-
12 tation expenses, loss of earnings, funeral costs, and replacement
13 services loss.

14 “Full personal injury protection” (or “full PIP”): a personal
15 injury protection policy which does not include recovery for pain
16 and suffering as described in section 6D of chapter 231, except as
17 described in Section 34W, and for which the minimum level of
18 coverage per person, as referred to above, is twenty thousand dol-
19 lars.

20 After line 30, add the following:

21 “Hybrid personal injury protection” (or “hybrid PIP”), a per-
22 sonal injury protection policy which includes recovery for pain
23 and suffering as described in section 6D of chapter 231; the so-
24 called no-fault system in effect up through the year 2004 CE,
25 with a monetary threshold of \$2000 and a maximum level of cov-
26 erage per person of eight thousand dollars.

27 After line 121, add the following:

28 “Noneconomic loss”, subjective nonmonetary loss recognized
29 under applicable Massachusetts law.

30 After line 243, add the following:

31 “Tort maintenance coverage”: insurance coverage required of
32 an insured who chooses the hybrid PIP insurance coverage
33 whereby that insured may claim for liability based on fault above
34 any relevant tort threshold against their own insurer to the extent
35 of the coverage.

36 “Uncompensated economic loss”: that portion of economic loss
37 arising out of an accidental bodily injury of an insured person that
38 exceeds any benefits provided by personal injury protection cov-
39 erage or collateral sources.

1 SECTION 4. In order to establish the minimum personal injury
2 protection limits, Section 34A of Chapter 90, as above, is hereby
3 further amended by striking out, in line 155, the words “of at least
4 eight thousand dollars” and inserting in place thereof the
5 following words: “of the amount specified herein below”.

1 SECTION 5. In order to allow personal injury protection
2 insureds to sue the other party for losses above their policy limits

3 and to sue for noneconomic as well as economic losses under cer-
4 tain special circumstances, Section 34M of Chapter 90, as above,
5 is hereby amended by adding at the end of the current section the
6 following words:

7 “A full personal injury protection insured who is involved in an
8 accident with an insured covered under either hybrid personal
9 injury protection or full personal injury protection retains the right
10 based on fault to claim from that other insured for uncompensated
11 economic loss (and not for noneconomic loss).

12 “A hybrid personal injury protection insured who is involved in
13 an accident with an insured covered under either hybrid personal
14 injury protection or full personal injury protection retains the right
15 based on fault to claim from that other insured for uncompensated
16 economic and noneconomic loss.

17 “A personal injury protection insured may claim for both eco-
18 nomic and noneconomic losses from an uninsured motorist who
19 is liable for damages caused by the accident, from a motorist who
20 was under the influence of alcohol or illegal drugs at the time of
21 the accident and whose conduct was the proximate cause of the
22 accident, from a person who caused an injury while seeking to
23 intentionally injure another person, and from any other person
24 who is not affected by the limitations on tort rights and liabilities
25 of this chapter and whose conduct was the proximate cause of the
26 accident.”

1 SECTION 6. In order to add new sections to Chapter 90
2 relative to the choice of hybrid personal injury protection or full
3 personal injury protection, to the priority of claims, to the verifi-
4 cation of benefits, to proceedings involving out-of-state policies,
5 and to the tort maintenance coverage, Chapter 90, as above, is
6 hereby amended by adding after Section 34R the following new
7 sections:

8 Section 34S. Choice of a hybrid personal injury protection
9 policy or a full personal injury protection policy.

10 (a) Upon the earliest and first renewal of any applicable motor
11 vehicle insurance policy on or after the effective date of this act,
12 or prior to the issuance of a policy required by this act, a choice
13 must be made of a hybrid personal injury protection policy or of a
14 full personal injury protection policy as described in section 34A.

15 A choice made pursuant to this act is binding with respect to any
16 continuation, renewal, or reinstatement of an applicable motor
17 vehicle insurance policy, and continues with respect to any policy
18 or policies which extend, change, supersede, or replace the policy
19 unless a named insured subsequently makes a different choice in
20 writing. A choice by a named insured shall be on a form
21 approved by the commissioner of insurance and provided by the
22 insurer.

23 (b) A choice by one named insured binds all the other insureds
24 listed on that policy and all other resident relatives pursuant to the
25 rules of subsection (c) below.

26 (c)(1) If there are two or more policies in the household, each
27 with a different named insured, each such person shall have the
28 right to choose either a hybrid personal injury protection policy or
29 a full personal injury protection for himself or herself. That per-
30 son's choice shall determine that person's right no matter which
31 vehicle he or she is occupying or which vehicle he or she might be
32 struck by. The rights of all resident relatives of those named
33 insureds who are not motor vehicle owners shall be governed by
34 the choice applicable to the motor vehicle which they were occu-
35 pying at the time of injury, if that vehicle was owned by a resident
36 relative.

37 (2) In the event of a bodily injury occurring after the effective
38 date of this law, but prior to the effective date of the earliest and
39 first renewal of a motor vehicle insurance policy requiring a
40 choice, the hybrid personal injury protection policy will be applic-
41 able.

42 (3) In the event of a conflicting choice within the household
43 creating questions as to the applicability of a hybrid personal
44 injury protection policy or a full personal injury protection policy,
45 the personal injury protection policy will be applicable.

46 (d) The choice between a hybrid personal injury protection
47 policy and a full personal injury protection policy shall be applic-
48 able to every motor vehicle of the owner. In the event an owner
49 of more than one vehicle chooses different alternatives, the latest
50 choice prior to the accident giving rise to a claim governs and, in
51 the event of simultaneous choices, the hybrid personal injury pro-
52 tection policy governs. If any person fails to choose prior to a
53 motor vehicle accident, and subsection (c) (2) above does not

54 apply, he or she is conclusively presumed to have chosen the
55 hybrid personal injury protection policy as described in Section
56 34A.

57 (e) Said choice or otherwise being bound to a hybrid personal
58 injury protection policy or full personal injury protection policy
59 shall be considered voluntary. Provided that the insured shall
60 have completed the form described in Section 17 of this act, no
61 agent, broker, insurer, or employee of an agent, broker, or insurer
62 shall be held liable for damages resulting from the election or
63 failure to elect, unless that person's conduct is or was willful or
64 wanton.

65 Section 34T. Priority of claims.

66 Subject to section 34S, the priority of claims applicable to an
67 injury shall be as follows:

68 (a) The priority of claims shall be as follows:

69 (1) An occupant of a motor vehicle who suffers bodily injury
70 shall be covered by the motor vehicle insurance policy under
71 which he or she is insured as a named insured or resident relative.

72 (2) In the event that an occupant is not insured under a motor
73 vehicle insurance policy in (1) above, the occupant shall be cov-
74 ered under the owner's motor vehicle insurance policy.

75 (3) In the event that neither (1) nor (2) above apply, the occu-
76 pant shall be covered under the operator's motor vehicle insurance
77 policy. Provided, however, if the injury occurs in a motor vehicle
78 being used in the business of transporting people for a fee, or in a
79 motor vehicle furnished by the injured person's employer, the
80 injured person has the choice of claiming under the personal
81 injury protection policy applicable to the vehicle instead of his or
82 her own coverage.

83 (b) Once said choice is exercised by the injured person as set
84 forth in subsection (a), then in no event shall the limit of liability
85 for any uninsured motorists coverage which would possibly apply,
86 be added to or stacked upon the personal injury protection policy
87 which applies to the injured person's choice.

88 (c) An insurer may exclude coverage under a personal injury
89 protection policy where the named insured or any resident relative
90 who does not own a motor vehicle is injured while occupying a
91 motor vehicle owned by the named insured but which is not
92 described in that insurance policy's declaration page.

93 Section 34U. Verification of entitlement benefits.

94 (a) Every employer shall furnish the information on a form
95 approved by the commissioner regarding an employee who has
96 filed a claim for personal injury protection benefits if a request is
97 made by an insurer providing such benefits under this chapter.

98 (b) Every physician, hospital, clinic, or other medical institu-
99 tion providing, before or after an injury resulting from a motor
100 vehicle accident, upon which a claim for personal injury protec-
101 tion benefits is based, any products, services, or treatment in rela-
102 tion to that or any other injury, or in relation to a condition
103 claimed to be connected with that or any other injury shall, if
104 requested to do so by the personal injury protection insurer
105 against whom the claim has been made, furnish a written report of
106 the history, condition, and treatment, and the dates and cost of
107 such treatment, of the injured person. Such information shall be
108 provided together with a sworn statement that the treatment of
109 services rendered were reasonable and necessary with respect to
110 the injury sustained and identifying which portion of the expense
111 for such treatment or services was incurred as a result of such
112 injury. Every such physician, hospital, clinic, or other medical
113 institution shall also promptly produce and permit the inspection
114 and copying of its records regarding such history, condition, and
115 treatment, and the dates and costs of treatment. The sworn state-
116 ment required under this section shall read as follows:

117 “Under penalty of perjury I declare that I have read the fore-
118 going and the facts alleged are true, to the best of my knowledge
119 and belief.”

120 No cause of action for violation of a physician-patient privilege
121 or invasion of the right of privacy is allowed against any physi-
122 cian, hospital, clinic, or other medical institution complying with
123 the provisions of this section. The person requesting records and
124 a sworn statement under this subsection shall pay all reasonable
125 costs connected therewith.

126 (c) In the event of any dispute regarding the personal injury
127 protection insurer’s right to discovery of facts about an injured
128 person, a court of record may enter an order for such discovery as
129 justice requires.

130 Section 34V. Out-of-state policies.

131 (a) Each insurer authorized to transact or transacting business
132 in this state shall file with the commissioner, as a condition of its
133 continued transactions of business with the Commonwealth, a
134 form approved by the commissioner declaring that any contract of
135 motor vehicle liability insurance, wherever issued, covering the
136 maintenance or use of a motor vehicle while the motor vehicle is
137 in this state is deemed to provide the insurance required for tradi-
138 tional liability policies issued in this state, unless the named
139 insured, prior to a motor vehicle accident within this state, has
140 chosen a personal injury protection policy under this chapter in
141 which case the out-of-state policy is deemed to provide the insur-
142 ance required for a personal injury protection policy. Any nonad-
143 mitted insurer may also file such a form.

144 (b) A person whose policy is deemed to incorporate the tradi-
145 tional liability policy requirements under subsection (a) shall be
146 deemed to be a traditional liability policy insured. A person
147 whose policy is deemed to incorporate the personal injury protec-
148 tion policy requirements under subsection (a) shall be deemed to
149 be a personal injury protection insured subject to this act. If a
150 policy under subsection (a) also provides coverage in excess of or
151 in addition to that required for a traditional liability or a personal
152 injury protection policy, that excess or additional coverage shall
153 also apply.

154 Section 34W. Tort maintenance system.

155 (a) Every insurer offering hybrid personal injury protection
156 coverage shall offer, and every insured who chooses hybrid per-
157 sonal injury protection shall be required to purchase, tort mainte-
158 nance coverage at a level that is at least equivalent to the
159 minimum required bodily injury level. Such coverage shall allow
160 such insured to claim against their own insurer for liability based
161 on fault above the relevant tort threshold up to the extent of the
162 coverage.

1 SECTION 7. In order that consumers become as fully aware as
2 possible of the consequences of the choices of hybrid personal
3 injury protection and full personal injury protection, Chapter 175
4 of the General Laws, as above, is hereby amended by adding after
5 Section 3C the following new section:

6 Section 3D. The Commissioner of Insurance shall conduct, or
7 cause the insurance companies to conduct, effective ongoing
8 informational programs in order to assist the public to understand
9 the choices of hybrid personal injury protection and full personal
10 injury protection available to an insurer or obligor relative to auto-
11 mobile insurance, as described in Chapter 90, and the ramifica-
12 tions of these choices. Such informational programs shall include,
13 but not be limited to, information relative to the comparative costs
14 of insurance under the hybrid personal injury protection policy
15 and the full personal injury protection policy, and the benefits,
16 rights, and obligations of insurers and insureds under each such
17 policy.

18 The Commissioner of Insurance shall prepare a standardized
19 form or forms on which an insured or obligor as above shall indi-
20 cate, by initialing or in some other affirmative manner, that said
21 insured or obligor understands the choices available to him or her,
22 as described in said Chapter 90, and voluntarily accepts the rami-
23 fications of the selected choice. Said form or forms shall include
24 the information relative to comparative costs, benefits, rights, and
25 obligations described above. The Commissioner shall distribute a
26 sample copy of such form or forms to all companies licensed to do
27 motor vehicle insurance business in the Commonwealth. A copy
28 of such form or forms shall be required to be completed as part of
29 any new motor vehicle insurance contract, and of any change of
30 choice of policy in such contract, between the company and the
31 insured or obligor.

1 SECTION 8. In order to allow optional higher personal injury
2 protection benefit levels, Section 113C of Chapter 175 of the
3 General Laws, as above, is hereby amended by inserting after line
4 26 the following words:

5 Similarly, such insurers shall offer additional personal injury
6 protection coverage beyond that required by section thirty-four A
7 of chapter ninety, to bring such benefit levels up to fifty thousand
8 dollars (\$50,000), one hundred thousand dollars (\$100,000), two
9 hundred and fifty thousand dollars (\$250,000), five hundred thou-
10 sand dollars (\$500,000), and one million dollars (\$1,000,000) for
11 all eligible victims, and any other amounts determined by the
12 Commissioner of Insurance to be reasonable.

1 SECTION 9. In order to void the current monetary and verbal
2 thresholds for full personal injury protection policies while main-
3 taining them for hybrid personal injury protection policies,
4 Section 6D of Chapter 231 of the General Laws, as above, is
5 hereby amended as follows:

6 By adding after the words “a plaintiff” in line 4 the words:
7 “insured under a hybrid personal injury protection policy as
8 described in section 34A”;

9 By adding at the end of the current section the words:
10 “A plaintiff insured under a full personal injury protection
11 policy as described in section 34A is not eligible to recover for
12 damages for pain and suffering.”

1 SECTION 10. In order to fairly assess and distribute the costs
2 of claims above tort maintenance coverage limits, the Commis-
3 sioner of Insurance shall be directed to develop a facility to reallo-
4 cate the expenses incurred by the successful claims of hybrid
5 personal injury protection insureds against full personal injury
6 protection insureds for both noneconomic and economic losses
7 above the relevant tort maintenance coverage limits, as stated in
8 Section 34M of Chapter 90 of the General Laws as modified by
9 Section 5 of this act, such as to assure that the advantage of tort
10 claim waivers by personal injury protection insureds against
11 hybrid personal injury protection insureds is reflected in the pre-
12 miums of full personal injury protection insureds.

13 To facilitate this development, the Commissioner of Insurance
14 is authorized to benefit from information about such a facility
15 from the experience of other states, including but not limited to
16 the experience of the State of New Jersey where such a facility is
17 currently in operation.

18 As specified in Section 12 of this act, this reallocation facility
19 is to be established and ready for operation prior to the initiation
20 of the automobile insurance system described in this act.

1 SECTION 11. The provisions of this act are severable, and if
2 any part of this act shall be adjudged unconstitutional or otherwise
3 invalid by any court of competent jurisdiction, the validity of the
4 remaining parts shall not be affected thereby.

1 SECTION 12. This act shall take effect nine (9) months from
2 the date of its enactment, or on January first of the year two thou-
3 sand and six, whichever date is later, except 1) that the provisions
4 of Section 10 of this act are to be commenced immediately upon
5 enactment of this act and shall be completed prior to that effective
6 date, and 2) that any preparatory actions necessary to permit the
7 other sections of this act to be effective on that date shall be
8 allowed to proceed prior to that date.